

role in selection, *i.e.*, no employee may be selected as a result of the exercise of discretion by the railroad. The selection method shall be capable of verification with respect to the randomness of the selection process.

(f) The railroad shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the railroad conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual railroad or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this part or any DOT drug testing rule.

(g) Each railroad shall ensure that random drug tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(h) If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency for the same railroad, the employee shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

(i) If a railroad is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the railroad may—

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the railroad is subject.

[59 FR 62228, Dec. 2, 1994]

§ 219.603 Participation in drug testing.

Participation. A railroad shall, under the conditions specified in this subpart and subpart H, require a covered employee selected through the random

testing program to cooperate in urine testing to determine compliance with § 219.102, and the employee shall provide the required sample and complete the required paperwork and certifications. Compliance by the employee shall be excused only in the case of a documented medical or family emergency.

[54 FR 53259, Dec. 27, 1989, as amended at 59 FR 7463, Feb. 15, 1994]

§ 219.605 Positive drug test results; procedures.

(a) *Medical review.* The result of a test required under this subpart shall be deemed positive only after it has been properly confirmed as required in subpart H of this part and reviewed by a Medical Review Officer (MRO) as provided in subpart H to determine if it is evidence of prohibited drug use under § 219.102.

(b) Procedures for administrative handling by the railroad in the event a sample provided under this subpart is reported as positive by the MRO are set forth in § 219.104 of this part. The responsive action required in § 219.104 is not stayed pending the result of a retest or split sample test.

[54 FR 53259, Dec. 27, 1989, as amended at 59 FR 7463, Feb. 15, 1994]

§ 219.607 Railroad random alcohol testing programs.

(a) Each railroad shall submit for FRA approval a random alcohol testing program meeting the requirements of this subpart. A Class I railroad (including the National Railroad Passenger Corporation) or a railroad providing commuter passenger service shall submit such a program not later than August 15, 1994. A Class II railroad shall submit such a program not later than February 15, 1995. A Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall submit such a program not later than August 15, 1995. A railroad commencing operations after the pertinent date specified in this paragraph shall submit a random alcohol testing program not later than 30 days prior to such commencement. The program shall be submitted to the Associate Administrator for Safety, FRA, for review